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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIGUEL ZUNIGA ARTEAGA,
ARMANDO MARTINEZ,
TERRY WHITED,
MIGUEL ANGEL SANCHEZ-MEZA,
JUAN VIZUETT-RESENDIZ, and
VINCENTE SALVADOR ARENAS-GARCIA,

Defendants.

CASE NO. 1:20-CR-00212-DAD-BAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

CURRENT DATE: November 10, 2021
TIME: 1:00 p.m.
COURT: Hon. Barbara A. McAuliffe

This case is set for status conference on November 10, 2021. On May 13, 2020, this Court issued General Order 618, which suspended all jury trials in the Eastern District of California until further notice, and allows district judges to continue all criminal matters. Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order

618, ¶ 7 (E.D. Cal. May 13, 2020). This and other General Orders were entered to address public health concerns related to COVID-19 (for example, General Order 614—recently extended by General Order 635).

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

1 In light of the societal context created by the foregoing, this Court should consider the following
2 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
3 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
4 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
5 pretrial continuance must be “specifically limited in time”).

6 **STIPULATION**

7 Plaintiff United States of America, by and through its counsel of record, and defendant MIGUEL
8 ZUNIGA ARTEAGA, by and through defendant’s counsel of record, Nicholas Reyes, defendant
9 ARMANDO MARTINEZ, by and through defendant’s counsel of record, Caroline McCreary, defendant
10 MIGUEL ANGEL SANCHEZ-MEZA, by and through defendant’s counsel of record, Richard A.
11 Beshwate, JUAN VIZUETT-RESENDIZ, by and through defendant’s counsel of record, Monica
12 Bermudez, and VINCENTE SALVADOR ARENAS-GARCIA, by and through defendant’s counsel of
13 record, Harry M. Drandell, seek a continuance of the current status conference to March 23, 2022 and
14 hereby stipulate as follows:

15 1. By previous order, this matter was set for status on November 10, 2021.

16 2. By this stipulation, defendants now move to continue the status conference until March
17 23, 2022, and to exclude time between November 10, 2021, and March 23, 2022, under Local Codes T2
18 and T4.

19 3. The parties agree and stipulate, and request that the Court find the following:

20 a) The government has represented that the discovery associated with this case
21 includes over 15,000 pages of Bates stamped discovery and several months of wiretap
22 recordings. All of this discovery has been either produced directly to counsel and/or made
23 available for inspection and copying.

24 b) Counsel for defendants desire additional time to consult with their clients, to
25 review the current charges, to conduct investigation and research related to the charges, to review
26 and copy discovery for this matter, to discuss potential resolutions with their clients, to prepare

27
28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 pretrial motions, and to otherwise prepare for trial.

2 c) Counsel for defendants believe that failure to grant the above-requested
3 continuance would deny them the reasonable time necessary for effective preparation, taking into
4 account the exercise of due diligence.

5 d) The government does not object to the continuance.

6 e) Additionally, given the voluminous discovery and the fact that this case involved
7 a wiretap investigation, it is so complex that it is unreasonable to expect adequate preparation for
8 pretrial proceedings or for the trial itself prior to March 23, 2022.

9 f) Based on the above-stated findings, the ends of justice served by continuing the
10 case as requested outweigh the interest of the public and the defendant in a trial within the
11 original date prescribed by the Speedy Trial Act.

12 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
13 et seq., within which trial must commence, the time period of November 10, 2021 to March 23,
14 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
15 T4] and 18 U.S.C. § 3161(h)(7)(A), B(ii) [Local Code T2], because it results from a continuance
16 granted by the Court at defendant's request on the basis of the Court's finding that the ends of
17 justice served by taking such action outweigh the best interest of the public and the defendant in
18 a speedy trial.

19 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
20 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
21 must commence.

22 IT IS SO STIPULATED.

23
24 Dated: November 3, 2021

PHILLIP A. TALBERT
Acting United States Attorney

26
27 /s/ JESSICA A. MASSEY
JESSICA A. MASSEY
Assistant United States Attorney

1 Dated: November 3, 2021

/s/ per email authorization
NICHOLAS REYES
Counsel for Defendant
MIGUEL ZUNIGA ARTEAGA

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3
4 Dated: November 3, 2021

/s/ per email authorization
CAROLINE MCCREARY
Counsel for Defendant
ARMANDO MARTINEZ

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7
8 Dated: November 3, 2021

/s/ per email authorization
RICHARD A. BESHWATE
Counsel for Defendant
MIGUEL ANGEL SANCHEZ-
MEZA

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10
11
12 Dated: November 3, 2021

/s/ per email authorization
MONICA BERMUDEZ
Counsel for Defendant
JUAN VIZUETT-RESENDIZ

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14
15
16 Dated: November 3, 2021

/s/ per email authorization
HARRY DRANDELL
Counsel for Defendant
VINCENTE SALVADOR
ARENAS-GARCIA

ORDER

IT IS SO ORDERED that the status conference is continued from November 10, 2021, to **March 23, 2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: **November 4, 2021**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE